

OFFICE COMMUNICATION

The amendment filed on 3/17/09 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because they are drawn to a method of either making or using a composition. Since applicant has received an action on the merits for the originally presented invention (i.e., a composition; see page 3, paragraph 2, of final rejection mailed 12/17/08, e.g.), this invention has been constructively elected by original presentation for prosecution on the merits. See 37 C.F.R. 1.142(b) and M.P.E.P. § 821.03.

The general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is once made and action given on the elected subject matter, in this case the composition comprising a cell layer as recited in claim 1. See MPEP § 819.

Since the above-mentioned amendment appears to be a bona fide attempt to reply, applicant is given a **TIME PERIOD** of **ONE (1) MONTH or THIRTY (30) DAYS**, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lora E. Barnhart whose telephone number is 571-272-1928. The examiner can normally be reached on Monday-Friday, 8:00am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lora E Barnhart/
Primary Examiner, Art Unit 1651